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Supreme Court of the United States

No. 901

ADELA VACHIER,
PETITIONER,

v.

McCORMICK, ALCAIDE & CO.,
RESPONDENT.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE COMMONWEALTH OF PUERTO RICO

BRIEF FOR RESPONDENT IN OPPOSITION

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To the Honorable Chief Justice and the Associate Justices of the Supreme Court of the United States.

(a) Opinions of the Court Below.

The Opinions of the Supreme Court of Puerto Rico (R. 12-47), not yet officially published, and the Opinion of the Supreme Court of Puerto Rico (R. 48-52) unreported, are included in the Appendix to the Petition for Writ of Certiorari.

(b) Jurisdiction.

The jurisdictional requisites are adequately set forth in the Petition for Writ of Certiorari, hereinafter referred to as "the Petition".

(c) Question Presented.

The only question presented for review by the Petitioner is whether the judgment rendered by the Supreme Court of Puerto Rico violates the 14th Amendment of the Federal Constitution and Sections 7 and 9 of Article II of the Commonwealth Constitution inasmuch as it is alleged by the Petitioner that said judgment deprives her of her property without due process of law and without payment of any compensation therefor.

(d) Statute Involved.

The statutory provisions involved are sections 282, 302, 304, 305 and 309 of the Civil Code of Puerto Rico (31 L.P.R.A., Secs. 1113, 1169, 1171, 1172 and 1176); the 14th Amendment of the Federal Constitution and Sections 7 and 9 of Article II of the Constitution of the Commonwealth of Puerto Rico: (*1 L.P.R.A. 180 and 181*).

(e) Statement of the Case.

The facts involved in the judgment sought to be reviewed are so clearly stated in the first paragraph of the Opinion of the Supreme Court of Puerto Rico (Appendix of Petition, p. 12), that respondent prefers to reproduce it:

> "The Rio Grande of Loiza is a common boundary between the lands of the parties in this litigation. The plaintiff is the owner of a property south of the river. The defendant of one to the north. With the flow of time and of the waters of the river, the erosive action of the current has changed the course of the river at the expense of plaintiff's lands. This process has been developing gradually since the year 1914 and at the

time that this complaint was filed, August 8, 1958, defendant's property had increased its area by 7.40 cuerdas. To revendicate this portion of land plaintiff filed the present suit.

"The trial court dismissed the action relying on the provisions of Sec. 302 of the Civil Code (31 LPRA Sec. 1169".

The Supreme Court of Puerto Rico affirmed the judgment of the Superior Court of Puerto Rico, San Juan Part, which decided that the 7.40 cuerdas were acquired by the respondent by virtue of the right of accession.[1]

(f) Reasons for the Denial of the Writ.

Before proceeding to answer the arguments of the petitioner for the granting of the writ, respondent respectfully submits the following grounds for its denial:

Lack of Any Constitutional Question Regarding the Federal or the Commonwealth Constitutions

1. An examination of the Opinions of the Supreme Court and of the Superior Court of Puerto Rico (R. 12-47) reveals that the petitioner failed to raise in the Superior Court any constitutional point affecting the 14th Amendment of the Federal Constitution or Sections 7 and 9 of Article II of the Constitution of the Commonwealth of Puerto Rico and that she presented her case as one only involving a question of accession under the Civil Code of Puerto Rico.

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[1] "The gradual increase of lands adjoining creeks, streams, rivers, and lakes caused by accretion or decritus shall belong to the riparian owners. Mineral sediments which are to be used as such must be applied for in accordance with the provisions of the mining laws." (12 L.P.R.A., Sec. 638.)

It was in the motion for reconsideration filed before the Supreme Court of Puerto Rico, which did not entertain the same, that petitioner for the first time raised a constitutional question under the statutes mentioned hereinabove.

The constitutional ground set out now by the petitioner is an artificial one purposely elaborated in order to raise an apparent jurisdictional issue before this Supreme Court, in her effort, as a defeated party, to get another hearing: *Magnum Co.* v. *Coty*, 262 U.S. 159-163, although she has had already the benefit of one appellate review of her case before the Supreme Court of Puerto Rico; *Dick* v. *New York Insurance Co.*, 359 U.S. 437-452.

2. Because the petition lacks any federal question of substance or any state or territorial question in any way in conflict with the applicable state or territorial law.

3. The petition in this case only involves a plea to review the facts in controversy as they have been appreciated by the Supreme Court according to the stipulation of facts subscribed by the parties; the weight of the documentary evidence offered by them and the inspection made by the trial judge. Said facts have received the concurrent appreciation of the Supreme Court of Puerto Rico, and the petitioner has disregarded the fact that this Hon. Supreme Court is a court of law and not a court for correction of errors; *United States* v. *Johnston*, 268 U.S. 220, 227; *Southern Power Co.* v. *North Carolina Public Service Co.*, 263 U.S. 508; *Grover Mfg. Co.* v. *Linde Co.*, 336 U.S. 271-275; the present case not being one covered by the exception to the rule stated.

4. As the only issue involved in this Writ is one of local law for the determination as to whether Section 309 of the Civil Code of Puerto Rico (*31 L.P.R.A., Sec. 1176*), is of application to the facts that were in controversy as it is claimed by the petitioner, instead of Section 302 of said

Code (31 *L.P.R.A. Sec. 1169*) and Section 47 of the Law of Waters of Puerto Rico, as has been decided by the Courts below, the respondent now tries to raise the question that since the enactment of 28 U.S.C.A. 1258, all local law determinations made by the Supreme Court of Puerto Rico are final for all review purposes by this Supreme Court.

5. That there is no serious legal question involved in the petition, except maybe one of merely academical refinement: *English* v. *Cunningham*, 361 U.S. 905, 907; of no importance to the public interest, the issue involved in the Petition being limited only to the parties in this issue: *Layne & Bowler Corp.* v. *Western Well Works*, 261 U.S. 387, 393; *Rice* v. *Sioux City Cemetery*, 349 U.S. 70, 79.

Proof of the accuracy of the foregoing ground is that although the Spanish Code was extended to the islands of Puerto Rico, Cuba, and the Philippines by Royal Decree of July 31, 1889, and took effect in Puerto Rico on January 1, 1890; *Rodriguez* v. *San Miguel*, 4 D.P.R. 101, and *Torres* v. *Rubianes*, 20 D.P.R. 316, and the present revised Civil Code of Puerto Rico became effective on July 1, 1902, *Estate of Morales* v. *Registrar*, 16 D.P.R. 109, and *Buso* v. *Buso*, 18 D.P.R. 964, and the Spanish Law of Waters of June 13, 1879, was extended to Puerto Rico by Royal Order of April 5, 1886, *12 L.P.R.A. 501*, (History Amendments, and Codification of Law Waters) which continued in force with some procedural changes, the instant case is the first one to arise under Sections 302, 304 and 309 of the Civil Code of Puerto Rico, 31 L.P.R.A. 1169, 1171, 1172 and 1176 and under Section 47 of the Law of Waters of Puerto Rico, *12 L.P.R.A. 638*.[2]

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[2] Sections 302, 304, 305 and 309 and Civil Code of Puerto Rico correspond to Sections 366, 368, 369 and 374 of the Spanish Civil Code and Section 47 of the Law of Waters of Puerto Rico to Section 44 of the Spanish Law of Waters approved June 13, 1879; Enciclopedia Juridica Espanola (Seix) Vol. II, p. 293.

The petitioner admits in her petition that at present there is no decision of the Supreme Court of Puerto Rico in conflict with the judgment rendered by it in this case, but that if the Writ is granted, it "may probably be the object of a decision by this Hon. Supreme Court of the United States in conflict with the judgment rendered by the Supreme Court of Puerto Rico"; Petition, page 7. The same thing happens with all petitions of Certiorari as soon as the Writ is granted.

The Supreme Court of Puerto Rico adhered to the doctrine of the common law, that before a tenement bordering a stream can claim acquisition by alluvion, three definite conditions must be present, to wit: (1) the tenement should have as boundary the same river or stream claimed; (2) the land in dispute ought to form an integral part of the riparian tenement after the land abandoned and subject of alluvion has incorporated in the tenement farms, and (3) that the deposit of the land to which the alluvion referred to is deposited slowly or imperceptibly by the action of nature and not by the hand of man; Petition 23.

After the Supreme Court below had examined the evidence offered before the trial judge, it concluded "that in the present case all three conditions required for alluvion exist". Petition 25.[3]

Such being the conclusion of both courts below, the Supreme and the Superior Courts of Puerto Rico, what the petitioner pretends is a total review by this Hon. Supreme Court of the findings of facts which supported the Judgment rendered.

It is manifest that in this case there is a clear absence of

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[3] Oyuelos, Digesto, Vol. 2, pag. 105; Bonel y Sanchez, Codigo Civil Espanol, Vol. II, pag. 171; Manresa, Comentarios al Codigo Civil, Vol. 3, pag. 323, 7th Ed.; Gay de Montella, Tratado de Legislacion de Agua, Vol. 1, pag. 199; Enciclopedia Espanola de Derecho y Administracion, Vol. 2, pag. 580 and *County of St. Clair* v. *Lovingston*, 90 U.S. 46.

conflict of decisions and of any question of Federal Law which require a determination by this Hon. Supreme Court.

Conclusion

For the foregoing reasons it is respectfully submitted that the petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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